



STATE OF MINNESOTA

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October 5, 2009

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Cheryl L. Newton, AE-17J
Director of Air and Radiation
U.S. EPA, Region V
77 W. Jackson Blvd.
Chicago, IL 60604

BY ELECTRONIC MAIL PDF AND BY U.S. MAIL

Re: 40 C.F.R. § 2.402 Request for Testimony in *In the Matter of the Metropolitan Council's Construction and Operation of an Air Emission Facility Without An Air Emission Permit.*

Dear Ms. Newton,

This letter is to request testimony from staff of U.S. EPA, Region V in support of the Minnesota Pollution Control Agency (MPCA) at an administrative hearing scheduled for October 27 - 29, 2009, in St. Paul, Minnesota. The MPCA believes that it is in U.S. EPA's interests to do so.

The MPCA has been designated by U.S. EPA to operate both an air emission permitting and enforcement program. As part of those programs, the MPCA is pursuing enforcement action against the Metropolitan Council, Metro Transit Division (Met Council) for failure to obtain a permit prior to constructing an light rail maintenance facility in 2001.

The MPCA alleges that the maintenance facility needed a permit because the potential-to-emit for the facility exceeds major source thresholds due to a large paint booth and the only way to authorize the paint booth for the smaller actual emissions is through a permit with enforceable conditions. The paint booth was begun, but not completed during the original construction and has been used only on a small scale for touch-up work since construction. The Met Council would like to complete the paint booth, but on a smaller scale than originally designed. The structural work needed for the full-scale paint booth was installed at the time of original construction.

The Met Council is calculating its potential-to-emit focused on its actual emissions and concludes that it does not need a permit at all. It believes that the dry time for each rail car painted in the booth is a bottleneck that severely limits its potential-to-emit.

MPCA's permitting unit is calculating potential to emit in a manner it believes to be consistent with U.S. EPA guidance and past practice. MPCA staff has already submitted its calculations to Genevieve D'Amico and understands that Region V agrees that MPCA staff has made a proper potential-to-emit calculation.

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The administrative hearing is to establish the potential-to-emit calculations, which will then establish whether the Met Council maintenance facility should have obtained a permit prior to construction and whether it needs one now to continue to operate the facility or to complete the full-scale paint booth.

The MPCA seeks testimony from U.S. EPA, Region V to affirm that MPCA staff have properly calculated the maintenance facility's potential-to-emit. MPCA believes that testimony from U.S. EPA, Region V is important for two reasons:

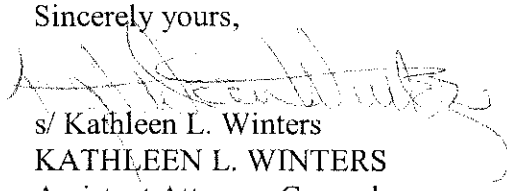
First, testimony from U.S. EPA, Region V that affirms the MPCA's calculations should help to preserve the MPCA's role as the air emissions permitting authority for the State of Minnesota.

Second, if the MPCA prevails in the administrative hearing, Met Council has an opportunity for judicial review of the final decision to the Minnesota Court of Appeals. A decision by the Court of Appeals could be cited by other regulated parties and states because the question of how to calculate potential-to-emit has not been widely litigated. For purposes of such an appeal, it is important to have a strong record regarding the calculation of potential-to-emit for judicial review. We believe that U.S. EPA would have an interest in insuring that Minnesota state courts defer to the MPCA and U.S. EPA's technical expertise in the matter of calculating emissions for permitting purposes.

For these reasons, we ask that Region V agree to provide staff to testify in support of the MPCA's calculations at the hearing. If you are agreeable to this request, we can discuss who would best fill our testimony needs.

Thank you for your consideration.

Sincerely yours,



s/ Kathleen L. Winters
KATHLEEN L. WINTERS
Assistant Attorney General

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c: Bill Wagner, Office of Regional Counsel, U.S. EPA, Region V
Don Smith, Air Quality Permit Section Manager, MPCA